

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT  
OF THE TTAB

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Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Ferrellgas, L.P.

Serial No. 75738326

Request for Reconsideration

Michael Elbein of Hovey Williams LLP for Ferrellgas, L.P.

Fred Mandir, Trademark Examining Attorney, Law Office 105  
(Thomas G. Howell, Managing Attorney).

Before Walters, Chapman and Bucher, Administrative Trademark  
Judges.

Opinion by Bucher, Administrative Trademark Judge:

The Trademark Examining Attorney, citing to In re Ferrero  
S.p.A., 22 USPQ2d 1800 (TTAB 1992), has requested  
reconsideration of the Board's decision reversing the  
Trademark Examining Attorney's refusal to register the mark  
FUELGAS for "propane gas" and for the "transportation of  
propane gas by truck and pipeline," on the Principal Register

under Section 2(f) of the Trademark Act (15 U.S.C. §1052(f)) on the ground that the mark is generic.<sup>1</sup>

The Trademark Examining Attorney re-argues many of the points made in his original brief, continuing to maintain that the term FUELGAS is the generic name of the goods and the category of goods transported. However, nowhere does he explain how our earlier decision was erroneous. Additionally, he has submitted two dictionary definitions, asking us to take judicial notice of these new entries.

Applicant argues that a request for reconsideration should not be used to re-argue old points or to supplement the evidentiary record. Cf. Amoco Oil Co. v. Americo Inc., 201 USPQ 126 (TTAB 1978). We agree.

Furthermore, even considering the substance of these two newly-submitted dictionary entries, we would not change our earlier decision herein. Inasmuch as the Trademark Examining Attorney carries a heavy burden in order to establish that this mark is generic for the goods and services described in the application, and given that these two new dictionary

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<sup>1</sup> Application Serial No. 75738326 was filed on June 28, 1999 based upon applicant's claim of use in commerce since at least as early as September 12, 1958. The Board issued a decision on November 6, 2003 marked as not citable as precedent of the TTAB. Because the Trademark Examining Attorney's request for reconsideration of the decision of the Board was filed on December 5, 2003, we find it to have been timely filed. See In re Ferrero S.p.A., 24 USPQ2d 1061 (TTAB 1992).

entries comport with the evidence of record considered in reaching our earlier opinion, we still have doubts about the genericness of the term FUELGAS for the identified goods and recited services.

Specifically, the newly-submitted dictionary entries are as follows:

**fuel gas** [MATER] A gaseous fuel used to provide heat energy when burned with oxygen.<sup>2</sup>

**fuel gas:** a gas, such as acetylene, natural gas or hydrogen, normally used with oxygen in an oxyfuel process, and for heating.<sup>3</sup>

Our original decision noted that the term "fuel gas" does have a specific meaning in the oxyfuel context. This involves the mixing of pure oxygen with "fuel gases" (such as acetylene, natural gas or hydrogen) for brazing, cutting, heating and welding metal. We then concluded that:

... "oxygen-fuel gas" is a term of art for welding and cutting torches ([torchcutter.com](http://torchcutter.com), [energyadditives.com](http://energyadditives.com), [deansafe.com](http://deansafe.com)). Yet none of these examples demonstrates generic usage for propane gas or for the transportation of propane gas.

(our decision dated November 6, 2003, p. 8).

Clearly, both of these new entries mention heat: the first entry contains the wording "heat energy" while the

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<sup>2</sup> McGraw-Hill Dictionary of Scientific and Technical Terms (5<sup>th</sup> Ed. 1994).

<sup>3</sup> Delmar's Automotive Dictionary (1997).

second adds briefly, at the very ending of the definition, the wording "and for heating." In the context of the scant evidence in the record about oxyfuel applications, it is clear that metal fabrication may well include the "heating" of metal in manufacturing goods. Nonetheless, the Trademark Examining Attorney apparently would have us interpret these few words in these entries as including the use of propane gas for home heating.

However, the focus of both definitions is on oxyfuels, and neither makes any mention of propane. Accepting the Trademark Examining Attorney's attempted interpretation of this vague language about "heating" drawn from specialized dictionary entries would clearly fly in the face of the weight of the evidence in this record drawn from the Internet and from the LEXIS/NEXIS database. Hence, on this total record, such a reading would seem to us to constitute an unwise and unwarranted stretch.

Accordingly, we deny the Trademark Examining Attorney's request for reconsideration. The application will be forwarded for publication for opposition in the Trademark Official Gazette under the provisions of Section 2(f) of the Lanham Act.